

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1688 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
ANIL AMRUTLAL ZALTE

Versus

STATE OF GUJARAT

-----  
Appearance:

MS SUBHADRA G PATEL for Petitioner  
MR MR ANAND,P.P., with Mr.N.D.Gohil, A.P.P.  
for Respondent No. 1

-----  
CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 17/01/97

ORAL JUDGEMENT

Rule. Service of Rule waived by Mr.M.R.Anand,  
learned P.P. with Mr.N.D.Gohil, learned A.P.P. for the  
state.

2. The petitioner, a convict, sentenced to suffer  
life imprisonment by virtue of such conviction under  
Section 302 of the Indian Penal Code, has filed this

application for issuing appropriate direction to the concerned Authority, viz. I.G.Prison, for deciding the petitioner's application for granting due furlough. The grievance is that the said authority has yet not decided the application alleged to have been filed by the petitioner in November, 1996. The learned Counsel appearing on behalf of the respondents have objected to the petitioner's right for grant of furlough leave on the ground that there is a Government Resolution of November 17, 1995, which appears to have been based upon the decision of this Court in State of Gujarat, V/s. Jayantilal Maganlal Patel, reported in 1995 (2) G.L.H. 260. This decision was canvassed in number of matters in support of the argument that when the Appeal of the convict - prisoner is pending before furlough application could not be entertained. This Court in Special Criminal application No. 1625/95 (Coram : J.M.Panchal, J.), decided on 11.12.1995, in Special Criminal Application No. 1637/95 (Coram : D.G.Karia, J.) decided on 13.12.1995 and in Nanabhai Ratnabhai V/s. State of Gujarat, Special Criminal Application No.1480/96 (Coram : S.D.Dave, J.), decided on 1.11.1996, observed that the decision in State of Gujarat V/s. Jayantilal Maganbhai (supra) speaks regarding parole only under Rule 19 of the Prison (Bombay Furlough and Parole) Rules, 1959 and it does not speak about furlough leave. The view that has been expressed is that the fact that the Appeal of the prisoner against conviction is pending before this Court cannot and should not come in the way of prisoner when he is asking for the furlough which has become due.

3. In above view of the position of law with regard to the furlough in the context of pendency of Appeal against conviction the present petition deserves to be granted. The concerned Authority of the respondent shall decide the petitioner's application for furlough leave in accordance with law within a period of 10 days from the date of receipt of this direction.

Rule made absolute in the aforesaid terms.

\* \* \* \* \*